

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CAROLYN BETTON, et al.,)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. 4:05CV01455 JCH
)	
ST. LOUIS COUNTY,)	
)	
Defendant(s).)	

MEMORANDUM AND ORDER

This matter is before the Court upon Eric T. Tolen’s Motion for Award of Costs (“Motion”).
(Doc. No. 152).

Discussion

I. Filing Fees

Mr. Tolen requested costs for the filing fee in the District Court (\$250.00) and the fee for notice of appeal in the Eighth Circuit Court of Appeals (\$455.00). Mr. Tolen asserts that he paid these fees and has not been reimbursed for them. (Motion, ¶¶ 2, 3). Mr. Tolen asks this Court to order Defendant St. Louis County to remit payment for the filing fees to his mother. (Motion, p. 2).

The Court finds that the filing fee for the District Court and the fee for the notice of appeal in the Eighth Circuit Court of Appeals are taxable costs. The Court awards \$705.00 in costs to Mr. Tolen. The Court, however, finds no basis for ordering St. Louis County to remit the money to Mr. Tolen’s mother.¹

¹Mr. Tolen’s mother is not the “prevailing party.” See Fed.R.Civ.P. 54(d)(1). The Court also notes that Mr. Tolen has not asserted that his mother has power of attorney over his affairs or would have any other basis for handling this payment.

II. Deposition Costs

Mr. Tolen also requests the Court award costs for the depositions taken by Midwest Litigation. Mr. Tolen admits that he incurred these costs while representing Plaintiffs, but never paid Midwest Litigation. (Motion, ¶¶ 5-6). The Court denied these costs to Plaintiffs' Counsel² in its May 14, 2010 Order because Plaintiffs' Counsel did not provide any agreement with either Mr. Tolen or Midwest Litigation demonstrating their agreement to a payment arrangement. (Doc. No. 147). In his Motion, Mr. Tolen affirmatively states that he has agreed for the Court to remit payment for the depositions to Plaintiffs' Counsel, who will, in turn, pay Midwest Litigation. (Motion, ¶7).

The Court will award payment to Plaintiffs' Counsel for the cost of the depositions of the Plaintiffs.³ The Court awards Plaintiffs' Counsel deposition costs in the amount of \$565.50.⁴

Accordingly,

IT IS HEREBY ORDERED that Eric T. Tolen's Motion for Award of Costs (Doc. No. 152) is **DENIED** in part and **GRANTED** in part.

IT IS HEREBY FURTHER ORDERED that costs are taxed against Defendant and in favor of Eric Tolen in the amount of \$705.00. Defendants shall remit payment to Mr. Tolen at the Jefferson City Correctional Center.

²The Court refers to Plaintiffs' current counsel, Sowers & Wolf, LLC and Tolen Law Offices, as "Plaintiff's Counsel."

³Although Cytoys Durham was not a successful plaintiff, the Court agrees that her deposition was necessary for this litigation and is properly taxable.

⁴The Court deducted the shipping and handling costs from the requested amount. Shipping and handling costs are non-taxable.

IT IS HEREBY FURTHER ORDERED that costs are taxed against Defendant and in favor of Plaintiffs in the amount of \$565.50. Defendants shall remit payment to Plaintiffs' Counsel for the benefit of Midwest Litigation.

Dated this 24th day of May, 2010.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE